

## **Part IV.**

# **ROLLBACK PROCEDURE ON 1-d-1 LAND**

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### **The "Rollback" Tax**

The law imposes a "rollback" tax on 1-d-1 land when the owner stops using it for agriculture. The same is true for 1-d land, but selling 1-d land also triggers a rollback. Under 1-d-1, the rollback tax is a penalty for taking the land out of agricultural production.

This penalty is commonly called a rollback because it recaptures the taxes the owner would have paid had his property been taxed at market value for each year covered by the rollback. This section discusses 1-d-1 rollbacks. It explains what triggers a 1-d-1 rollback and shows how to calculate the rollback tax. Section V, beginning on page 37, discusses 1-d rollbacks.

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The law imposes a "rollback" tax on 1-d-1 land when it is taken out of agricultural use. The rollback tax equals the difference between the taxes the owner actually paid in the five years preceding the change in use and the taxes the owner would have paid on his property's market value.

Technically, the tax is a new, additional tax imposed by law on the date the cessation or change of use occurs. It has its own delinquency date, and it does not exist until the event that triggers the rollback occurs.

The property owner can trigger the rollback by ending agricultural operations or diverting the property to a non-agricultural use. Selling the property doesn't trigger the 1-d-1 rollback. If the property owner diverts only part of a property to a non-agricultural use, the rollback tax only applies to the changed portion.

The chief appraiser determines if and when the change of use occurs and must send the owner written notice of the determination. If the owner does not protest the determination or the appraisal review board decides the use has changed, the tax assessor will calculate the amount of additional tax due, add the appropriate amount of interest, and send a rollback tax bill.

## **WHAT QUALIFIES AS A CHANGE OF USE?**

A change of use is a physical change. The owner must stop using the land for agricultural purposes.

If the owner continues to use the land for agriculture but does not maintain the degree of

intensity typical for the area, the land may lose its eligibility for 1-d-1 appraisal without suffering a rollback. Reduced intensity that results from the owner's free choice will cause a loss of agricultural appraisal. Reduced intensity resulting from agricultural necessity will not. If the land remains in agricultural use, however, neither kind of reduction will trigger a rollback.

Suppose, for example, that the typical ranching operation in a district has one animal unit for every 10 acres of pasture. A landowner who has been receiving agricultural appraisal gets tired of ranching and sells off his entire herd. Since he has stopped all agricultural activity, he will lose agricultural appraisal and suffer a rollback.

If, however, the rancher reduces his herd so that he has one animal unit for every 50 acres of pasture, he will lose his eligibility for agricultural appraisal without suffering a rollback. Since the land remains in agricultural use, the rollback penalties do not apply. The same result occurs when the land is sold to a non-resident alien or when agriculture ceases to be the primary use of the land.

Special situations such as freezes, droughts, or severe fires can create an agricultural necessity that extends the normal time the land remains out of agricultural production. In such cases, the land remains eligible for agricultural appraisal until the owner clearly evidences an intent to give up agriculture permanently. For example, a drought might deplete water and feed supplies, requiring ranchers to sell off their herds and leave the land idle until native pasture is restored. If, after one year, the typical rancher restocks his herd and resumes production, those ranchers who keep their land out of agricultural use more than one year will lose their eligibility for 1-d-1 appraisal and suffer a rollback. The same general principles would apply if a drought damaged the land and required farmers to suspend agricultural operations for a period exceeding the normal soil rotation period or if freezes destroyed citrus groves.

If agricultural necessity forces a property owner to postpone agricultural operations on part of a larger tract, he can retain agricultural appraisal on the entire tract, and he will not incur a rollback on any portion of the property. For example, fire might destroy 200 acres of a 2,000 acre range, forcing the owner to postpone agricultural operations on those 200 acres until the native pasture restored itself. The owner would continue to receive agricultural appraisal on the entire tract.

Chief appraisers must exercise great care in determining when a change of use triggers a rollback. Rollback is a serious economic penalty that should not be imposed when circumstances beyond a property owner's control cause an abnormally long but temporary suspension of agriculture. Appraisers must keep in mind that change of use issues are often unclear and require a delicate balance between fair applications of the law and good decisions based on the facts of each situation.

Some changes of use do not trigger a rollback. Property condemned or sold for right of way won't be rolled back even if its use changes. Filing a waiver of special appraisal will not trigger a rollback if the use does not change. Also, a property owner can divest part of the land for use as his own residence homestead without triggering a rollback. If, however, an owner builds a residence homestead on land that formerly qualified for 1-d-1 appraisal, he avoids rollback only as long as he continues to use the home as a residence. Selling the home may trigger a rollback on the land making up the homestead. In effect, the owner must occupy the house for five years to avoid a rollback tax accruing for the years the land was not taxed at market value.

## **The Change of Use Determination**

On determining either that agriculture has stopped or that the land has been diverted to a non-agricultural use, the chief appraiser must send the owner written notice of the determination. The notice must explain the owner's right to protest the determination. The required SPTB notice of change of use determination is in Appendix F.

The owner may protest the change of use decision by filing a protest with the appraisal review board within 30 days after the notice is mailed. The appraisal review board must hear a timely protest even if appraisal records have been approved for the year.

## Taxes for the Year that the Use Changes

If land changes to a non-qualifying use from a qualifying one after the appraisal review board has approved the appraisal records, the land is back assessed for the difference between the property's market value and its agricultural use value. The assessor sends a supplemental bill for taxes on the added value. This amount becomes delinquent on the same date as the original tax bill for the property. If those taxes have been paid, the supplemental bill becomes delinquent on February 1 of the year following the date the bill is mailed or the first day of the next following month that allows the property owner 21 days to pay the tax, whichever is later.

## HOW IS THE ROLLBACK CALCULATED?

The 1-d-1 rollback covers the five calendar years preceding the current year. If the use changes in 1989, the rollback covers 1988, 1987, 1986, 1985, and 1984. The preceding years are based on the use from January through December and not on the tax collection periods.

The rollback tax itself is the difference between the taxes paid under special appraisal and the total taxes that would have been paid on the market value of the land. For example:

Year	Tax Paid	Tax on Market Value	Difference
1988	\$ 50	\$ 500	\$ 450
1987	\$ 50	\$ 520	\$ 470
1986	\$ 50	\$ 500	\$ 450
1985	\$ 50	\$ 480	\$ 430
1984	\$ 50	\$ 420	<u>\$ 370</u>
Total Rollback Tax:			\$ 2,170

The assessor must add seven percent annual interest on these amounts from the date they would have become due. The due date for each year is the date tax bills were mailed that year.

Since the assessor computes interest from the date the difference would have become due to the date the change of use occurs, some proration will be necessary.

Assuming that the use changed November 1, 1989, and that the assessor mailed tax bills on October 1 each year, the interest is calculated as follows:

1988 interest runs from October 1, 1988 to November 1, 1989, or 1 year and 32 days.

The formula for the interest is:

\$ 450.00 = Tax  
\$ 31.50 = \$ 450 x .07 = One year's interest  
\$ 2.76 = \$ 450 x .07 x (32 ÷ 365) = 32 days' interest  
\$ 484.26 = Total 1988 tax and interest

1987 interest runs from October 1, 1987 to November 1, 1989, or 2 years and 32 days.

The formula for the interest is:

\$ 470.00 = Tax  
\$ 65.80 = \$ 470 x .07 x 2 = 2 years' interest  
\$ 2.88 = \$ 470 x .07 x (32 ÷ 365) = 32 days' interest  
\$ 538.68 = Total 1987 tax and interest

1986 interest runs from October 1, 1986 to November 1, 1989, or 3 years and 32 days.

The formula for the interest is:

\$ 450.00 = Tax  
\$ 94.50 = \$ 450 x .07 x 3 = 3 years' interest  
\$ 2.76 = \$ 450 x .07 x (32 ÷ 365) = 32 days' interest  
\$ 547.26 = Total 1986 tax and interest

1985 interest runs from October 1, 1985 to November 1, 1989, or 4 years and 32 days.  
The formula for the interest is:

\$ 430.00	= Tax
\$ 120.40	= $\$430 \times .07 \times 4 = 4 \text{ years' interest}$
\$ <u>2.64</u>	= $\$430 \times .07 \times (32 \div 365) = 32 \text{ days' interest}$
\$ 553.04	= Total 1985 tax and interest

1984 interest runs from October 1, 1984 to November 1, 1989, or 5 years and 32 days.  
The formula for the interest is:

\$ 370.00	= Tax
\$ 129.50	= $\$370 \times .07 \times 5 = 5 \text{ years' interest}$
\$ <u>2.27</u>	= $\$370 \times .07 \times (32 \div 365) = 32 \text{ days' interest}$
\$ 501.77	= Total 1984 tax and interest

The total rollback tax and interest due is \$2,625.01.

The interest proration can be done using number of days only. For example, 1985's interest runs for 1,492 days (4 years = 1,460 days + 32 days from October 1 to November 1). The interest can be computed by multiplying:

$$\$430 \times .07 \times (1,492 \div 365) = \$123.04$$

## GAPS IN THE FIVE-YEAR PERIOD

It could happen that the five-year rollback period will include years when the property didn't qualify for agricultural use appraisal. If the property had been taxed on market value in 1985, the rollback tax would have been computed for 1984, 1986, 1987, and 1988.

It could also happen that the property owner switched from 1-d to 1-d-1 designation during the five year period. Calculation in these cases is discussed in Part V, dealing with 1-d rollbacks.

## WHEN ARE ROLLBACK TAXES DUE?

The rollback tax is due when the rollback tax bill is mailed. It becomes delinquent if not paid before the February 1 that is at least 20 days after the tax bill is mailed. For example, if the bill is mailed on January 9, it becomes delinquent on the next February 1 because there are 20 days between February 1 and January 9. However, if the bill is mailed January 30, it becomes delinquent the February of the following year. On the delinquency date the entire amount begins to draw penalty and interest at the same rate as delinquent taxes.

A tax lien attaches to the land on the date the use changes. The lien covers payment of the additional tax, interest, and any penalties.

If land is sold at about the same time the use changes, the buyer and seller may dispute liability. Under the law, the person who has title to the property on the date the use changes is personally liable for the rollback, but the lien may be foreclosed against the land regardless of who is liable for taxes. Tax certificates on land that receives agricultural appraisal must note the appraisal and state that the land may be subject to additional taxes.

## **DOES THE ROLLBACK TAX APPLY TO LAND BOUGHT AND CHANGED BY AN EXEMPT ORGANIZATION OR GOVERNMENT ENTITY?**

Exemptions that apply to ordinary property taxes do not apply to rollback taxes. Even if the land might be exempt from ordinary taxes in the new owner's hands, the rollback tax still becomes due if that owner takes the property out of agricultural use. In most cases, the owner will be personally liable for the rollback tax, and the tax lien can be enforced against the property. Where the state or a political subdivision buys the land and changes the use, the rollback will be triggered but the lien cannot be foreclosed. The tax can't be collected unless the governmental entity chooses to pay it. However, the lien against the land continues and could be enforced against a later buyer.

## **QUESTIONS ABOUT ROLLBACK PROCEDURES**

**Q.** Is a rollback triggered if land loses its eligibility for special appraisal or if the owner does not reapply?

**A.** No. Only an end to all agricultural use or an affirmative change of use triggers rollback under 1-d-1. If the land continues in agricultural use but no longer qualifies, it will be taxed at market value. However, there will be no rollback tax.

**Q.** Is a rollback automatically triggered if the property owner files documents to plat his land?

**A.** No. Evidence that the actual use of the land has changed triggers the rollback. Plat documents provide some evidence but must be accompanied by physical change, such as ceasing agricultural operations, cutting roads, or installing utilities. Even in that case, the change of use may affect only part of the platted land.

**Q.** Does sale of the land to an alien trigger a rollback?

**A.** No. An alien's residency status can affect eligibility for special appraisal, but only cessation or change of use triggers a 1-d-1 rollback. See page 11 for a discussion of resident and non-resident aliens.

**Q.** Do discounts for early payment apply to rollback taxes?

**A.** No. Discounts to encourage prompt payment of taxes apply only to regular property taxes. They do not apply to rollback taxes.

**Sec. 23.55, Property Tax Code. Change of Use of Land.**

(a) If the use of land that has been appraised as provided by this subchapter changes, an additional tax is imposed on the land equal to the difference between the taxes imposed on the land for each of the five years preceding the year in which the change of use occurs that the land was appraised as provided by this subchapter and the tax that would have been imposed had the land been taxed on the basis of market value in each of those years, plus interest at an annual rate of seven percent calculated from the dates on which the differences would have become due.

(b) A tax lien attaches to the land on the date the change of use occurs to secure payment of the additional tax and interest imposed by this section and any penalties incurred. The lien exists in favor of all taxing units for which the additional tax is imposed.

(c) The additional tax imposed by this section does not apply to a year for which the tax has already been imposed.

(d) If the change of use applies to only part of a parcel that has been appraised as provided by this subchapter, the additional tax applies only to that part of the parcel and equals the difference between the taxes imposed on that part of the parcel and the taxes that would have been imposed had that part been taxed on the basis of market value.

(e) A determination that a change in use of the land has occurred is made by the chief appraiser. The chief appraiser shall deliver a notice of the determination to the owner of the land as soon as possible after making the determination and shall include in the notice an explanation of the owner's right to protest the determination. If the owner does not file a timely protest or if the final determination of the protest is that the additional taxes are due, the assessor for each taxing unit shall prepare and deliver a bill for the additional taxes plus interest as soon as practicable. The taxes and interest are due and become delinquent and incur penalties and interest as provided by law for ad valorem taxes imposed by the taxing unit if not paid before the next February 1 that is at least 20 days after the date the bill is delivered to the owner of the land.

(f) The sanctions provided by Subsection (a) of this sec-

tion do not apply if the change of use occurs as a result of a sale for right-of-way or a condemnation.

(g) If the use of the land changes to a use that qualifies under Subchapter E of this chapter, the sanctions provided by Subsection (a) of this section do not apply.

(h) Additional taxes, if any, for a year in which land was designated for agricultural use as provided by Subchapter C of this chapter (or Article VIII, Section 1-d, of the constitution) are determined as provided by that subchapter, and the additional taxes imposed by this section do not apply for that year.

(i) The use of land does not change for purposes of Subsection (a) of this section solely because the owner of the land claims it as part of his residence homestead for purposes of Section 11.13 of this code.

**Sec. 41.41(8). Right of Protest.**

(a) A property owner is entitled to protest before the appraisal review board the following actions:

(8) a determination that a change in use of land appraised under Subchapter C, D, or E, Chapter 23, has occurred.

**Sec. 41.44(a)(3) and (c). Notice of Protest.**

(a) Except as provided by Subsections (b) and (c), to be entitled to a hearing and determination of a protest, the property owner initiating the protest must file a written notice of the protest with the appraisal review board having authority to hear the matter protested:

(3) in the case of a determination that a change in the use of land appraised under Subchapter C, D, or E, Chapter 23, has occurred, not later than the 30th day after the date the notice of the determination is delivered to the property owner.

(c) A property owner who files notice of a protest authorized by Section 41.411 is entitled to a hearing and determination of the protest if he files the notice prior to the date the taxes on the property to which the notice applies become delinquent. An owner of land who files a notice of protest under Subsection (a)(3) is entitled to a hearing and determination of the protest without regard to whether the appraisal records are approved.